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May 30, 2017

By ECF:

Hon. James C. Francis
Southern District of New York
500 Pearl Street
New York, NY 1007

Re: United States of America v. New York City Department of Education
16-CV-004291 (LAK) (JCF)

Dear Judge Francis:

Defendant the New York City Department of Education (“DOE”) respectfully submits this letter in response to the motion to compel by plaintiff, the United States of America (“USA”), seeking *in camera* review of twenty-eight (28) documents followed by production of non-privileged material.

Upon further review, the DOE will agree to produce two of the challenged documents, regarding plaintiffs’ “discontinuances.”¹ Those documents, however, still contain privileged material and will be accordingly redacted in that they reflect legal counsel’s mental impressions and/or legal advice. Additionally, the DOE will produce the nine documents at issue concerning the parent coordinator. Although it is the DOE’s position that the objections asserted (excepting the attorney-client communication privilege) in connection with these nine documents are appropriate, the DOE will waive these objections for these nine documents only, such that discovery may proceed expeditiously.

Accordingly, there remain at issue seventeen (17) documents. The DOE has no objection to *in camera* review of those documents. It is the DOE’s position that these documents were all properly withheld due to the attorney-client privilege.

¹ DTI_003_000055376; P_1017465_A018326_000046437.

During our meet and confer on May 17, 2017, the USA asserted that it does not find our redactions based on attorney-client privilege to be appropriate, but did not provide an acceptable resolution for this issue short of producing the documents in full. Contrary to the USA's representations that no explanation was provided as to the DOE's privilege assertions, the DOE did explain to the plaintiffs that the attorney-client privilege assertions are founded in the applicable legal principles, and that the DOE will not waive that privilege where it is applicable.

In sum, defendant DOE respectfully requests that the Court deny the USA's motion to compel to the extent it is moot and to reserve decision on the remainder pending *in camera* review of the disputed (17) documents.

Yours,

/s/

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